



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 23, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0231

Dear Ms. Calabrese:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30467.

The City of Houston (the "city") received a request for records related to an automobile accident allegedly caused by a defective road sign. You assert that all of the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code. Specifically, you state that the city anticipates litigation on the matter.

To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In Open Records Decision No. 638 (1996), this office stated that a governmental body has met its burden of showing that litigation is reasonably anticipated when it receives a notice of claim letter *and* the governmental body represents that the notice of claim letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or an applicable municipal ordinance or statute.

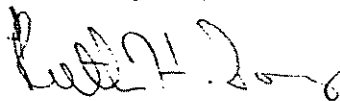
You have submitted to this office a copy of a letter from an attorney representing an individual who was injured in an automobile accident. The attorney alleges that "on or about June 27, 1994, Ms. Udoh was injured at the intersection of Dickson and Snover in Harris County, Texas, in an automobile accident." Further, the attorney states that "the proximate cause of the accident was the condition of the stop sign located at the intersection, which was under the care and control of the City of Houston." The attorney's letter indicates that he is making a claim against the city for damages sustained

by his client. We understand you to represent to this office that the claim letter is in compliance with the applicable municipal statute or ordinance. We also have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the city has met its burden for showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4. the city could choose to release the information at this time. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 30467

Enclosures: Open Records Decision No. 638 (1996))
Submitted documents

cc: Mr. Robert T. Saunders
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6750 West Loop South, Suite 500
Bellaire, Texas 77401
(w/enclosure ORD No. 638 (1996))